

Data Use Agreement

This Data Use Agreement (the “Agreement”), effective as [EFFECTIVE DATE] (the “Effective Date”), by and between and [NAME OF CHS ENTITY] (“Discloser”) and [NAME] (“Recipient”).

1. **Purpose.** This Agreement is to establish the terms and conditions under which Recipient will access and use certain data described below for the purpose [PUT PURPOSE].

2. **Description of Data.** Recipient will have access to Discloser’s clinical data (the “Data”) [CAN PUT SPECIFIC TYPE OF DATA].

3. **Recipient's Use of Data.** Except as otherwise specified herein, Discloser grants Recipient the right to use and disclose the Data solely [PUT HOW THEY CAN USE/DISCLOSE DATA] (“Activities”). The parties mutually agree that Discloser retains all ownership rights in the Data. Recipient shall limit the use and receipt of the Data to individuals who are employees or contractors of Recipient who need the Data for the performance of the Activities.

4. **Restrictions on Recipient's Use of Data.**

4.1 **Purpose.** Recipient agrees to use or disclose the Data exclusively for the purposes set forth in this Agreement or as required by law and only in accordance with the Health Insurance Portability and Accountability Act (“HIPAA”) and regulations promulgated under HIPAA, including but not limited to HITECH Act.

4.2 **Nondisclosure Except as Provided in Agreement.** Recipient shall not use or further disclose the Data except as permitted or required by this Agreement or as required by law.

4.3 **Safeguards.** Recipient agrees to use appropriate safeguards to protect the Data from misuse and unauthorized access or disclosure, including, without limitation,

(a) maintaining adequate administrative, physical and technical controls, such as Identity and Access Management controls and protections for any server or system on which the Data may be created, processed, stored, or transmitted;

(b) ensuring that Data is not stored on any mobile device (e.g., laptop, smartphone) or transmitted electronically unless data is protected by appropriate encryption technology; and

(c) taking any other measures reasonably necessary or required by HIPAA to prevent any unauthorized or fraudulent access, loss, modification, use or disclosure (collectively “Unauthorized Access”) of the Data other than as provided in this Agreement. Recipient shall not permit any of Discloser’s Data to be stored or transmitted where HIPAA is not enforced or outside of the United States without Discloser’s prior written permission.

4.3 Report Disclosure.

(a) Report. Recipient will report to Discloser any Unauthorized Access of the Data not provided for by this Agreement of which Recipient becomes aware.

(b) Notice. Such report shall be made to the Discloser at the address noted in this Agreement as soon as reasonably possible, but, in any event, no later than three (3) days from the date on which Recipient becomes aware of an Unauthorized Access to the Data.

(c) Cooperation and Mitigation. Recipient will fully cooperate, at its expense with any remediation that Discloser, in its sole discretion, determines is necessary to: (i) address any applicable reporting requirements; and (ii) mitigate any effects of such unauthorized use or disclosure of the Data, including, without limitation, measures necessary to protect against further damage (including, but not limited to, credit monitoring services), restore goodwill with stakeholders, including research subjects, collaborators, governmental authorities, and the public.

4.4 Agents and Subcontractors. Recipient will ensure that any agents, including subcontractors, to whom it provides the Data agree to the same restrictions and conditions set forth in this Agreement. Recipient shall be responsible for all acts of its contractors and licensors.

5. Intellectual Property

5.1 License. Discloser grants to Recipient a limited, nonexclusive, nontransferable, nonsublicensable license to use the Data solely for the purposes set forth in this Agreement.

5.2 No Rights Granted. Recipient agrees that nothing herein shall be deemed a grant of any intellectual property rights or other rights to use the Data for any products or processes for profit-making or commercial purposes.

5.3 Other Obligations. The Data will not be used in research that is subject to consulting or licensing obligations to another recipient, corporation, government agency or business entity.

6. Term and Termination

6.1 Term. This Agreement shall be effective as of the Effective Date and shall remain in effect throughout the term of the Services Agreement between [NAME OF CHS ENTITY] (“Discloser”) and [NAME] (“Recipient”) unless otherwise terminated as provided herein.

6.2 Termination. Upon Discloser's knowledge of a material breach by Recipient, Discloser may take any or all of the following actions:

(a) Provide Recipient with written notice of the breach and an opportunity to cure the breach within ten (10) days of receipt of such notice. If Recipient fails to cure the breach within the notice period, Discloser may immediately terminate this Agreement;

(b) Immediately terminate this Agreement if Discloser determines, in its sole discretion, that Recipient has breached a material term of this Agreement; or

(c) Report a violation to the Secretary of the Department of Health and Human Services.

6.3 Return or Destruction of Records. Upon termination of this Agreement for any reason, Recipient shall return, delete or destroy, as specified by Discloser, the Data that Recipient or its contractors and licensors still maintains in any form, and shall retain no copies of such Data. If Discloser, in its sole discretion, requires that Data destroy the Data, Recipient shall certify to Discloser that the Data has been destroyed. If return, deletion or destruction is not feasible, Recipient shall inform Discloser of the reason it is not feasible and the obligations of confidentiality under this Agreement shall continue to for such Data and limit further use and disclosure of such Data to those purposes that make the return or destruction of such Data infeasible.

7. Indemnification. Recipient will indemnify, defend and hold harmless Discloser, and its administrators, affiliates, shareholders, physicians, employees, agents, representatives, subsidiaries, officers, directors and volunteers and its respective successors, heirs, subcontractors and assigns (“Indemnitees”) from and against any claim, cause of action, liability, damage, fines, penalties, cost or expense (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any breach of this Agreement by Recipient or its contractors and licensors, Unauthorized Access to the Data or any other breach of this Agreement by Recipient or any subcontractor, agent or person under Recipient's control or failure to perform the obligations hereunder by Recipient, its employees, officers, volunteers, assigns or contractors.

8. Liability. Discloser makes no representations or warranties with respect to the Data. In no event shall Discloser be liable for any indirect, special, punitive, incidental or consequential damages, or damages for loss of profits, business interruption, loss of goodwill, or otherwise, arising from or relating to this agreement or to Recipient’s use of the Data.

9. General Provisions.

9.1 Notices. Any notices required to be given under this Agreement shall be given in writing and shall be delivered in person, by certified mail with postage prepaid and return receipt requested, by facsimile, or by commercial overnight courier that guarantees next-day delivery and provides a receipt, and such notices shall be addressed as follows:

Recipient:

Discloser:

9.2 Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties.

9.3 Assignment. Neither party may assign, transfer or convey, whether by contract, merger or operation of law, this Agreement or any right or obligation of this agreement, by

operation of law or otherwise without prior written consent of the party, which shall not be unreasonably withheld. Any purported transfer in violation of this Agreement shall be of no power or effect.

9.4 Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of Indiana, without regard to its conflict of laws rules. Venue for any dispute that arises from this Agreement shall be a state or federal court of competent jurisdiction located in Lake County, Indiana.

9.5 No Waiver. A party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver. No single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof.

9.6 Severability. A determination that any provision of this Agreement is invalid or unenforceable shall not affect the validity or enforceability of any other provision hereof.

9.7 Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The background recitals form a material part of this Agreement.

9.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral.

9.9 Amendment. This Agreement may be amended only by a written instrument signed by the parties.

IN WITNESS WHEREOF, Discloser and Recipient have each executed and delivered this Agreement as of the Effective Date.

Recipient:

Discloser:

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____